

No. 19996

IN THE

**United States Court of Appeals**  
FOR THE NINTH CIRCUIT

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NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

*vs.*

CADILLAC STEEL PRODUCTS CORPORATION,

*Respondent.*

---

On Petition for Enforcement of an Order of the  
National Labor Relations Board.

---

Respondent's Petition for a Rehearing.

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LOEB AND LOEB,  
HARRY J. KEATON,

523 West Sixth Street,  
Los Angeles, Calif. 90014,

*Attorneys for Respondent, Cadillac Steel  
Products Corporation.*

**FILED**

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WILL. B. LUCK, CLERK



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*To the Honorable Richard H. Chambers, Stanley N.  
Barnes and Ben Cushing Duniway, Circuit Judges:*

Cadillac Steel Products Corporation, Respondent herein, pursuant to the provisions of Rule 23 of this Court, hereby respectfully petitions for a rehearing of the within cause upon the following grounds:

## I.

The crucial question in this case is whether Respondent was entitled to a hearing at some stage of the representation and unfair labor practice proceedings upon the substantial and material factual issue whether an employee, whose vote would have affected the outcome of the election, failed to vote, due to his own fault or

because of irregularities in the election procedure which led the employee to believe that he had to wait until his name was called to vote.

The Court held that the Regional Director had the discretion to determine the reason for the employee's failure to vote without a hearing though there was a conflict between the facts presented by Respondent by way of affidavits and the facts developed by the Regional Director in an *ex parte* investigation. The sole basis for the Court's holding appears to be that Respondent signed a consent election agreement which left it to the Regional Director to determine whether a hearing should be held in disposing of objections and challenges [Sl. 0. 2]. The court reasoned that, by signing the consent agreement, respondent waived all rights to a hearing, as authorized by section 9(c)(4), 29 U.S.C. §159(c)(4). (*ibid.*)

In so holding, the Court failed to consider the crucial distinction between the waiver of a pre-election hearing, contemplated by section 9(c)(4), and the waiver of a post-election hearing on objections or challenges. The obvious purpose of section 9(c)(4), is to avoid the delay of elections by unnecessary *pre-election* hearings where there are no issues as to the scope of the appropriate bargaining unit, or any other matter which would require such a hearing. A party which signs an Agreement for Consent Election knows at the time of signing whether any such issues do exist and is therefore in the position of waiving a *pre-election* hearing with full knowledge of all applicable facts. In contrast, at such time no party could possibly know whether the election will result in objections or challenges, yet alone whether any such objections or challenges will involve disputed

factual issues. That the Agreement for Consent Election contemplates such a total waiver of a hearing on objections or challenges is made even more implausible by the fact that the waiver was held here to extend even to the ensuing unfair labor practice proceeding.

Waivers of a hearing in an unfair labor practice proceeding are not authorized by section 9(c)(4). The right to a hearing in an unfair labor practice proceeding is not merely granted by the Act but is protected by the Constitution (see Resp. Br. 18-19; 30-32). It should not be implied, in the absence of express language of waiver, that such an important right is waived by an agreement which has as its real purpose the expedition of elections. If it were to be the law that a party to a consent election agreement waives all rights to post-election hearings, without any recourse under any circumstances such agreements would rapidly fall into disuse because most parties would become reluctant to sign them.

## II.

The Court stated that this case is controlled by *N.L.R.B. v. Carlton Wood Products Co.*, 201 F. 2d 863 (9 Cir., 1953) and relied further on *N.L.R.B. v. Hood Corp.*, 346 F. 2d 1020 (9 Cir., 1965) and *N.L.R.B. v. Sumner Sand & Gravel Co.*, 293 F. 2d 754 (9 Cir. 1961). (Sl.-O. 2). Actually the holding in the instant case is contrary to the principles of law set forth in the *Carlton* and *Hood* cases.

In *Carlton*, the Court stated that the Regional Director could proceed *ex parte* only because there were no disputed basic facts. (291 F. 2d at 867). This important limitation was disregarded by the Court in this case. In *Hood* the Court held that the consent agree-

ment required the Regional Director to comply with the Rules and Regulations of the Board (346 F. 2d at 1022) (Resp. Br. 15-20). The consent form used in the instant case was issued by the U.S. Government Printing Office in 1961 [Tr. 6] and must have been the same as the form used in the *Hood* case. Yet here the Court has held, in effect, that the Regional Director may disregard the Board's Rules and Regulations which require post-election hearings in consent cases where there are substantial and material factual issues (Resp. Br. 16-18).

### Conclusion.

For the reasons set forth above the Petition for a Rehearing Should be granted.

Respectfully submitted,

LOEB AND LOEB,  
HARRY J. KEATON,

*Attorneys for Respondent, Cadillac  
Steel Products Corporation.*

**Certificate of Counsel.**

I am of counsel of record for respondent and certify that in my judgment this petition is well founded and that it is not interposed for delay.

HARRY J. KEATON

Dated, Los Angeles, California,

February 1, 1966

